

BEFORE THE CRANE AND HOISTING
OPERATING ENGINEERS PROGRAM
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 24.135.501 pertaining to)	AND ADOPTION
hoisting operators license requirements,)	
24.135.516 pertaining to crane hoisting)	
operators license requirements,)	
24.135.530 pertaining to mine hoisting)	
operators license requirements, and)	
NEW RULES I-VI pertaining to fee)	
schedule, renewals, national)	
commission certification, failed)	
examinations, applications, and)	
citations and fines)	

TO: All Concerned Persons

1. On October 6, 2005, the Department of Labor and Industry published MAR Notice No. 24-135-1 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1871 of the 2005 Montana Administrative Register, issue no. 19.

2. On November 1, 2005, at 1:00 p.m., a public hearing was held in Helena, Montana, and 18 members of the public spoke at the public hearing. In addition, one written comment was received prior to the closing of the comment period.

3. The Department has thoroughly considered all of the comments made. A summary of the comments received and the Department's responses are as follows:

COMMENT 1: A commenter stated that he doesn't feel that the Department has verified the need for an increase.

RESPONSE 1: The Department refers to the statement of reasonable necessity presented in the proposal notice immediately after the new fee rule, NEW RULE I. Projected revenues for fiscal year 2006, using the existing fee structure is estimated at \$66,640, but expenditures (expenses) are approximately \$105,640. This results in a projected deficit of \$39,000 by the end of fiscal year 2006. Pursuant to 50-76-104(2), MCA, fees must be commensurate with the costs of operating the crane and hoist program. Operating at a structural deficit is a violation of law.

Revenue and expense projections for the next five years show that if fees are not increased, revenue will not be sufficient to meet expenses. Expense projections are based on fiscal year 2005 expenses and can be seen in the following table:

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
NO FEE INCREASE							
REVENUE	\$ 66,640.00	\$ 69,972.00	\$ 73,470.60	\$ 77,144.13	\$ 81,001.34	\$ 85,051.40	
EXPENSES	\$ 105,640.00	\$ 109,865.60	\$ 114,260.22	\$ 118,830.63	\$ 123,583.86	\$ 128,527.21	
BALANCE	\$ (39,000.00)	\$ (39,893.60)	\$ (40,789.62)	\$ (41,686.50)	\$ (42,582.52)	\$ (43,475.81)	\$ (247,428.06)
							TOTAL DEFICIT AFTER 5 YEARS
FEE INCREASES AS PROPOSED							
REVENUE	\$ 104,800.00	\$ 121,510.00	\$ 127,585.50	\$ 133,964.78	\$ 140,663.01	\$ 147,696.16	
EXPENSES	\$ 105,640.00	\$ 109,865.60	\$ 114,260.22	\$ 118,830.63	\$ 123,583.86	\$ 128,527.21	
BALANCE	\$ (840.00)	\$ 11,644.40	\$ 13,325.28	\$ 15,134.14	\$ 17,079.16	\$ 19,168.95	\$ 19,169.00
							TOTAL BALANCE AFTER 5 YEARS

Assumptions: 4% increase in expenses and 5% increase in income per year.

COMMENT 2: A commenter stated that he feels the Crane Program should increase the fee to \$60.00 instead of \$80.00.

RESPONSE 2: The Department refers to the statement of reasonable necessity presented in the proposal notice to point out that the proposed fee increases in renewal would generate approximately \$104,800 in revenue, plus new licensees. Keeping in mind that the projected expenditures are approximately \$105,640, the Department believes that any decrease in the proposed fees would not be in compliance with 50-76-104, MCA. Please refer to the response to Comment 1.

COMMENT 3: Comments asked the Department to explain why there is a \$105,000 loan, and where did the money go.

RESPONSE 3: The \$105,000 figure in question is actually \$105,640 in overall program expenditures. The program was required to take an inter-agency loan of \$4,200 at the end of fiscal year 2005 to allow the program to finish the fiscal year without a cash deficit. The \$4,200 was used to pay for the program's ordinary operating expenses. The inter-agency loan will be repaid with the revenue generated by the fees being adopted in NEW RULE I.

COMMENT 4: A commenter stated that the Department needs to deal with the issue of NCCO applicants.

RESPONSE 4: The Department has created NEW RULE III in direct response to the need to address NCCO applicants pursuant to Chapter 93, Laws of 2005 (HB 401) of the 2005 Legislative Session.

COMMENT 5: Comments were received regarding the need to address ANSI B30.5.

RESPONSE 5: The Department concurs and notes that while the requirements set forth by ANSI B30.5 are not a requirement pursuant to 50-76-110(2), MCA, the Department is in the process of drafting rules to incorporate specific sections.

COMMENT 6: A commenter stated that the rules pertaining to ANSI B30.5 were very sketchy.

RESPONSE 6: The Department notes that there were no rules pertaining to ANSI B30.5 in this notice.

COMMENT 7: A commenter stated that the Department should make sure that the tower crane regulations are implemented.

RESPONSE 7: The implementation of tower crane regulations was addressed in this notice with the amendment of ARM 24.135.516(5)(b).

COMMENT 8: A commenter stated that the State only has one person working for the crane program, yet fees are being increased.

RESPONSE 8: The Department points out that there are actually a total of 1.27 FTE billed to the crane program which includes a licensure compliance investigator as required by statute, and various office staff. Additionally, there is legal counsel assigned to the program.

COMMENT 9: A commenter asked in regards to fees, "How much would be enough?"

RESPONSE 9: The Department refers specifically to 50-76-104, MCA, and more generally to 37-1-134, MCA, which require licensure fees be commensurate with the cost of operating a program or a Board. The amount of the program's allowed operating costs is subject to the budget process and legislative approval. Additionally, programs or Boards are not allowed to have a surplus of revenue exceeding twice the amount of annual appropriation. Please refer to the response to Comment 1.

COMMENT 10: A commenter stated that he does not want anyone that doesn't know anything about a crane to ask for his license.

RESPONSE 10: The Department understands the commenter's concern, but points out that pursuant to 50-76-114(2), MCA, the Department already has the authority to direct an employee to verify licensure. Additionally, department staff may issue a citation and fine for not having a license.

COMMENT 11: A commenter asked how someone will complete a job if a plumbing inspector shuts down a crane for not having a license.

RESPONSE 11: Pursuant to 50-76-110(3), MCA, only the crane inspector as defined in the same statute may declare equipment "out of service."

COMMENT 12: A commenter asked if a crane inspector is doing electrical inspections.

RESPONSE 12: A crane inspector does not conduct electrical inspections; by law, those inspections are conducted by the Building Codes Bureau.

COMMENT 13: A commenter stated that applicants with NCCO should be required to take the Department's test to become licensed.

RESPONSE 13: Pursuant to 50-76-113(1), MCA, the Department is required to issue a license to any individual who holds the NCCO certification. This statute was adopted during the 2005 Legislative Session as part of Chapter 93 (HB 401).

COMMENT 14: A commenter stated that the fee increase would be a deterrent to more skilled employees coming in.

RESPONSE 14: The Department refers to 50-76-104, MCA, which requires all licensure fees be commensurate with the cost of operating the crane program. The Department concludes that the \$20 increase is not likely to be a significant barrier for a skilled worker who is contemplating an offer of work in Montana.

COMMENT 15: A commenter expressed difficulty for the 15-day "phase in period" for tower cranes.

RESPONSE 15: The Department states that there was no 15-day "phase in period". The effective date of the law passed during the 2005 Legislative Session as part of Chapter 93 (HB 401) was October 1, 2005.

COMMENT 16: A commenter stated that the Department should have notified the public that there was legislation regarding the crane industry.

RESPONSE 16: The Department did not propose the amendments to statute. The State of Montana provides an internet based legislative look-up system that allows interested persons to peruse, by topic, the general subject matter of every bill introduced during the legislative session. The entire text of those bills is available on-line through that same system.

The Department notes that many trades, professions and industries form private groups to monitor pending legislation and notify members of those groups of matters of interest and concern, or hire lobbyists or advisors to track such matters. The Department has not attempted to estimate the cost of tracking and providing timely

specific notice regarding proposed legislation regarding the crane industry, either to "the public" in general or to "the crane industry" in particular. Because of the speed of legislative developments, even notice by first class mail might not be particularly timely. The Department notes that if it had such duties, the costs of notification would be borne by licensees.

The Department may only propose and adopt administrative rules to implement enacted legislation. Pursuant to the rulemaking processes, the Department publishes all proposed rulemaking in the Montana Administrative Register and provides an opportunity for citizen input. Rulemaking notices are also posted on the Department's website, and mailed to licensees and other interested persons.

COMMENT 17: A commenter stated that the Department should change the renewal period to every two years to coincide with the physical requirements, charge the new fees, but only every two years.

RESPONSE 17: The Department is in the process of reviewing the option of a two-year renewal cycle. Biennial renewals would not lower fees but instead would simply require collection of double the fee every two years instead of annually. However, the renewal period is only a small portion of the expenditures of the program annually, and the program would remain active during non-renewal periods processing applications, administering examinations and providing compliance inspections. Pursuant to 50-76-104, MCA, the fees must be commensurate to the cost of operating the total program.

4. No other comments were received and the Department amends ARM 24.135.501, 24.135.516 and 24.135.530, and adopts NEW RULE I (24.135.402), NEW RULE II (24.135.2101), NEW RULE III (24.135.545), NEW RULE IV (24.135.412), NEW RULE V (24.135.409) and NEW RULE VI (24.135.404) exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 13, 2006